

Extinguishment of Liability in Tort (Discharge of Torts)

Extinguishment of liability in tort occurs when a wrongdoer's liability ceases due to specific legal reasons, even though a tort has been committed.

Key Factors for Extinguishment of Liability:

1. Death of Parties:

- Personal torts (e.g., assault, defamation) extinguish on the death of either party.
- Proprietary torts (e.g., trespass to land) survive and can be pursued by legal heirs.

Case Law: *Hambly v. Trott* (1776)

In this case, it was held that personal claims against a deceased person are not actionable after death.

2. Accord and Satisfaction:

- Accord: Agreement between parties to settle a tort claim.
- Satisfaction: Fulfillment of the agreed compensation.

Example: If the wrongdoer compensates the injured party, the liability is extinguished.

3. Release:

- The injured party voluntarily gives up their right to sue.
- The release must be voluntary and not obtained under duress.

4. Judgment (Res Judicata):

- Once a court judgment is passed on a tort claim, the same matter cannot be litigated again under Section 11 of CPC (*Res Judicata*).

5. Acquiescence:

- The injured party, by their conduct, accepts or permits the wrongful act, waiving their right to sue.



6. Lapse of Limitation Period:

- Tort claims must be filed within the statutory limitation period (typically 1-3 years). Once the period expires, the claim is barred.

General Defenses for Tort

General defenses are legal excuses a defendant can use to avoid liability in a tort claim, even if the wrongful act is proven.

Key General Defenses:

1. Volenti Non-Fit Injuria (Consent):

- A person who voluntarily consents to harm cannot claim damages.

Case Law: <i>Hall v. Brooklands Auto Racing Club</i>
In this case it was held that injuries at a car race were held non-actionable as the spectator consented to the risk.

2. The Wrongdoer is the Plaintiff (Ex Turpi Causa):

- If the plaintiff was engaged in illegal activities during the injury, they cannot claim damages.

Case Law: <i>Hegarty v. Shine</i>
In this case, it was held that there is no remedy for a plaintiff engaging in immoral acts.

3. Inevitable Accident:

- A harm caused without negligence or intention, despite taking all precautions, is not actionable.

Case Law: <i>Stanley v. Powell</i>
In this case, it was held that injury caused by an accidental gunshot during a hunting trip is inevitable accident and is not actionable.



4. Act of God (Vis Major):

- Natural, unforeseeable events (e.g., floods, earthquakes) absolve liability.

Case Law: *Nichols v. Marsland*

In this case, heavy rains caused a dam to burst, and the defendant was not liable.

5. Private Defense:

- The defendant can claim immunity if harm was caused while protecting oneself or property. The force must be reasonable.

6. Necessity:

- Harm caused to prevent greater harm is excusable. (*Necessitas non habet legem* – Necessity does not have any laws)

Case Law: *Carter v. Thomas*

In this case it was held that trespass to extinguish a fire was considered necessary.

7. Statutory Authority:

- Actions authorized by law are not tortious.

Case: *Vaughan v. Taff Vale Railway*

In this case it was held that railway companies not liable for fire caused by sparks from trains.

8. Mistake:

- Generally, mistake is not a valid defense unless it negates intent in certain torts (e.g., trespass).



Judicial and Extra-Judicial Remedies

Judicial Remedies

Judicial remedies refer to the remedies available through the courts for tortious acts. These remedies generally aim to provide compensation to the victim and to hold the wrongdoer accountable.

1. **Damages:** The most common judicial remedy, damages are a monetary award given to the victim for the harm caused. There are different types of damages:
 - **Compensatory Damages:** To compensate the plaintiff for the actual loss suffered (e.g., medical expenses, loss of earnings).
 - **Punitive/Exemplary Damages:** These are awarded to punish the defendant for particularly egregious conduct and deter others from committing similar acts.
 - **Nominal Damages:** Awarded when the plaintiff proves that a tort was committed but does not demonstrate significant harm or loss.
 - **Contemptuous Damages:** Awarded in cases where the plaintiff is entitled to damages, but the court is displeased with the plaintiff's conduct.
2. **Injunctions:** Courts can issue an injunction to prevent the defendant from continuing the wrongful act. There are two types of injunctions:
 - **Prohibitory Injunction:** Prevents the defendant from doing a particular act.
 - **Mandatory Injunction:** Compels the defendant to perform a particular act.
3. **Restitution:** This is an equitable remedy that requires the defendant to return the property or value that was wrongfully taken from the plaintiff.
4. **Account of Profits:** In cases of wrongful appropriation or torts related to property or trade secrets, a court may order the defendant to pay the plaintiff the profits made from the wrongful act.
5. **Specific Performance:** In cases where damages are insufficient, a court may order the defendant to fulfill a contractual obligation.



Extra Judicial Remedies

Extra-judicial remedies are remedies available outside the formal court system. These are often self-help remedies, which may be used by the aggrieved party to resolve a tortious situation without judicial intervention. However, they must be exercised within legal limits to avoid liability for further torts such as trespass or assault.

1. Self-Help:

- A party may take action to prevent further harm, such as defending themselves or their property. However, the use of self-help remedies must be reasonable and proportional to the harm.

2. Settlement:

- The parties involved in a tortious dispute may resolve the matter through negotiation or settlement. This may involve the payment of compensation or other forms of settlement.

3. Re-Entry:

- A landlord may re-enter the property if the tenant breaches a legal duty.

4. Abatement:

- Removing a nuisance without causing excessive harm (e.g., trimming a neighbor's overhanging tree).

5. Distress Damage Feasant:

- The injured party can detain trespassing goods or animals until compensation is paid.

6. Mediation and Arbitration:

- Alternative dispute resolution (ADR) methods, such as mediation and arbitration, can be used to resolve tort disputes without going to court. In mediation, a neutral third party helps the parties negotiate a settlement. In arbitration, the dispute is submitted to an arbitrator whose decision is binding.



7. Apology and Reconciliation:

- In cases of defamation or personal injury, an apology may serve as a form of extra-judicial remedy, particularly when it helps restore the plaintiff's reputation or mitigate harm.

Case Law: Rookes v. Barnard (1964)

The House of Lords clarified the award of punitive damages in tort law, particularly in cases involving oppressive or high-handed conduct.

Case Law: K. K. Verma v. Union of India (1954)

This case affirmed the availability of injunctions in tort law, especially in matters concerning continuing torts or wrongs.

